

Chapter 113B.

North Carolina Energy Policy Act of 1975.

Article 1.

Energy Policy Council.

§ 113B-1. Legislative findings and purpose.

Upon investigation the General Assembly hereby finds that:

- (1) Energy is essential to the health, safety and welfare of the people of this State and to the workings of the State economy. It is in the State's best interest to support the development of a reliable and adequate supply of energy for North Carolina that is secure, stable, and predictable in order to facilitate economic growth, job creation, and expansion of business and industry opportunities.
- (2), (3) Repealed by Session Laws 2013-365, s. 8(a), effective July 29, 2013.
- (3a) It is in the State's best interest to support the exploration, development, and production of domestic energy supplies, preferably from the resources within the State or region and most certainly from within the country.
- (3b) It is the duty of State government to protect and preserve the State's natural resources, cultural heritage, and quality of life and, above all, the public health and safety of its residents during the exploration, development, and production of domestic energy resources.
- (4) The State must provide the basis for development of a long-range unified energy policy to encompass comprehensive energy resource planning and efficient management of existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of energy that are capable of achieving a positive benefit-to-cost ratio, and to ensure efficient utilization of energy resources in a manner consistent with assuring a reliable and adequate supply of energy for North Carolina, including active support and collaboration with the federal government to ensure access to the nation's energy resources located on the outer continental shelf directly adjacent to the State's coastal waters.
- (5) It is the expressed intent of this Chapter to provide for development of such a unified domestic energy policy for the State of North Carolina as part of a nationwide effort for increased domestic energy production in the interest of national security and economic growth and stability. (1975, c. 877, s. 3; 2013-365, s. 8(a).)

§ 113B-2. Creation of Energy Policy Council; purpose of Council.

(a) The Energy Policy Council is created to advise and make recommendations on increasing domestic energy exploration, development, and production within the State and region to promote economic growth and job creation to the Governor and the General Assembly. The Energy Policy Council shall be located within the Department of Environmental Quality.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy Policy Council shall be as prescribed by the Secretary of Environmental Quality.

(c) The Energy Policy Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and

agencies to the end of effecting a coordinated energy policy. (1975, c. 877, s. 4; 1977, c. 23, ss. 1, 2; 2000-140, s. 76(a); 2009-446, s. 3; 2013-360, s. 15.22(l); 2013-365, s. 8(b); 2015-241, ss. 14.30(u), (v).)

§ 113B-3. Composition of Council; appointments; terms of members; removal; qualifications.

(a) The Energy Policy Council shall consist of 13 members to be appointed as follows:

(1), (2) Repealed by Session Laws 2013-365, s. 8(c), effective July 29, 2013.

(2a) The Secretary of Environmental Quality, or the Secretary's designee.

(2b) The Secretary of Commerce, or the Secretary's designee.

(2c) The Lieutenant Governor, or the Lieutenant Governor's designee.

(3) Ten public members who are citizens of the State of North Carolina and who are appointed in accordance with subsection (c) of this section.

(4) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

(b) Appointments to the Energy Policy Council shall be made by October 1, 2013. The terms of office of members of the Council are three years. The terms of members appointed under subdivisions (1), (4), and (6) of subsection (c) of this section shall expire on June 30 of years evenly divisible by three. The terms of members appointed under subdivisions (2), (5), (8), and (10) of subsection (c) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The terms of members appointed under subdivisions (3), (7), (11), and (12) of subsection (c) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three. Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy Policy Council shall have the qualifications and shall be appointed as follows:

(1) Repealed by Session Laws 2013-365, s. 8(c), effective July 29, 2013.

(2) One member shall have experience in natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

(2a) Repealed by Session Laws 2013-365, s. 8(c), effective July 29, 2013.

(3) One member shall be a representative of an investor-owned natural gas public utility, to be appointed by the Speaker of the House of Representatives.

(4) One member shall be an energy economist or a person with experience in the financing or business development of an energy-related business, to be appointed by the President Pro Tempore of the Senate.

(5) One member shall have experience in energy policy, to be appointed by the President Pro Tempore of the Senate.

(6) One member shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of energy, to be appointed by the Governor.

(8) One member shall have experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

(9) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

(10) One member shall have experience in energy research and development, to be appointed by the President Pro Tempore of the Senate.

- (11) One member shall have experience in environmental management, to be appointed by the Speaker of the House of Representatives.
- (12) One member shall be a representative of an investor-owned electric public utility, to be appointed by the President Pro Tempore of the Senate.
- (d) A Council member shall be automatically removed from the Council if he or she fails to attend three successive Council meetings without just cause as determined by the remainder of the Council.
- (e) The Governor shall have the power to remove any member of the Council from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973. (1975, c. 877, s. 4; 1977, c. 23, ss. 1, 5; c. 771, s. 4; 1979, c. 422; 1981, c. 701, ss. 4, 5; 1989, c. 727, s. 218(80); c. 751, s. 8(15); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1991, c. 739, s. 10; 1991 (Reg. Sess., 1992), c. 959, s. 27; 1997-443, s. 11A.119(a); 2009-446, s. 4; 2013-365, s. 8(c); 2015-1, s. 5; 2015-241, s. 14.30(v).)

§ 113B-4. Chairman of Council; replacement; reimbursement of members.

- (a) The Lieutenant Governor or the Lieutenant Governor's designee shall serve as chair of the Council.
- (b) In case of a vacancy in the membership on the Energy Policy Council prior to the expiration of a member's term, a successor shall be appointed within 30 days of such vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113B-3.
- (c) Members of the Energy Policy Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5. (1975, c. 877, s. 4; 1979, c. 514, s. 1; 2009-446, s. 5; 2013-365, s. 8(d); 2017-209, s. 15.)

§ 113B-5. Organization of the Council; adoption of rules of procedure therefor.

- (a) To facilitate the work of the Energy Policy Council and for administrative purposes, the chairman of the Energy Policy Council, with the consent and approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to insure the efficient operation of the Council.
- (b) The Energy Policy Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.
- (c) The Energy Policy Council is authorized to create such advisory committees as will be needed to assist the Council in its efforts and to assure adequate citizen-consumer input into those efforts. Members of advisory committees shall be appointed by the Council for terms not to exceed the expiration date of terms of then present public members of the Council. (1975, c. 877, s. 4.)

§ 113B-6. General duties and responsibilities.

The goal of the Energy Policy Council is to identify and utilize all domestic energy resources in order to ensure a secure, stable, and predictable energy supply and to protect the economy of the State, promote job creation, and expand business and industry opportunities while ensuring the protection and preservation of the State's natural resources, cultural heritage, and quality of life. The Energy Policy Council may delegate its duties where appropriate to the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality. The Council shall

provide oversight and approval to the duties delegated to the Division. The Energy Policy Council shall have the following general duties and responsibilities:

- (1) To develop and recommend to the Governor and the General Assembly a comprehensive State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present and future sources of energy, such policy to include but not be limited to energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the State's energy infrastructure and energy economy, including smart grid and domestic energy resources that shall include at least natural gas, coal, hydroelectric power, solar, wind, nuclear energy, and biomass. For utilities regulated under Chapter 62 of the General Statutes, the policy developed under this subdivision shall be consistent with the analysis and plan developed under G.S. 62-110.1(c).
- (2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy to facilitate the expansion of the domestic energy supply and to encourage the efficient use of all such energy forms in a manner consistent with State energy policy.
- (3) To continually review and coordinate all State government research, education and management programs relating to energy matters, to continually educate and inform the general public regarding such energy matters, and to actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.
- (4) To recommend to the Governor and to the General Assembly needed energy legislation and rule making, and to recommend for implementation such modifications of energy policy, plans, and programs as the Council considers necessary and desirable.
- (5) Repealed by Session Laws 2009-446, s. 6, effective August 7, 2009. (1975, c. 877, s. 4; 2000-140, s. 76(b); 2003-284, s. 18.3; 2009-446, s. 6; 2013-365, s. 8(e); 2015-241, s. 14.30(u).)

§ 113B-7. Energy Efficiency Program; components.

(a) The Energy Policy Council shall prepare a recommended Energy Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy Efficiency Program shall be designed to assure the public health and safety of the people of North Carolina and to consider the conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy Efficiency Program may include but not be limited to the following recommendations:

- (1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;
- (2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of

buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;

- (3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;
- (4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;
- (5) Recommendations on energy conservation policies, programs and procedures for local units of government;
- (6) Any other recommendations which the Energy Policy Council considers to be a significant part of a statewide conservation effort and which include provisions for sufficient incentives to further energy conservation;
- (7) An economic and environmental impact analysis of the recommended program.

(d) In addition to specific conservation recommendations, the Energy Efficiency Program shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended program, the Council shall arrange for its distribution to interested parties and shall make the program available to the public and the Council further shall set a date for public hearing on said program.

(e) Upon completion of the Energy Efficiency Program, the Council shall transmit said program, to be known as the State Energy Efficiency Program, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(f) The Governor shall transmit the approved Energy Efficiency Program to the President Pro Tempore of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every five years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy Policy Council shall review and, if necessary, revise the Energy Efficiency Program, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section. (1975, c. 877, s. 4; 1981, c. 701, s. 1; 2000-140, s. 76(c); 2013-365, s. 8(f).)

§ 113B-8. Energy Management Plan; components.

(a) The Energy Policy Council shall prepare a recommended Energy Management Plan for transmittal to the Governor, the initial plan to be completed by June 30, 1976.

(b) The Energy Management Plan shall be designed to encourage the most efficient use of all sources of energy available to meet the needs of the State and to avoid undue dependence upon relatively limited, unreliable or uneconomical sources of energy.

(c) The Energy Management Plan shall include but not be limited to the following:

- (1) An analysis of the current pattern of consumption of energy throughout the State by category of energy user and by sources of energy supply;
- (2) An assessment of the effect of demand and supply of different forms of energy upon the current pattern of consumption;
- (3) An independent analysis, in five-, 10-and 20-year forecasts, of future energy production, supplies and consumption for North Carolina in relation to forecasts of statewide population growth and economic expansion;
- (4) An analysis of the anticipated effects of recommended conservation measures upon the consumption of energy in the State;
- (5) An assessment of the possible effects of national energy and economic policy and international economic and political conditions upon an adequate and reliable supply of different forms of energy for North Carolina;
- (6) An assessment of the social, economic and environmental effects of alternative future consumption patterns on energy usage in North Carolina, including the potentially disruptive effects of supply limitations;
- (7) Recommendations on the use of different future energy sources that seem most appropriate and feasible for North Carolina in meeting expected energy needs during the next five-, 10-and 20-year periods, with consideration given to growth trends in North Carolina industry and possible adverse economic impact on such trends.

(d) In addition to the above, the Energy Management Plan shall contain proposals for the implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(e) Upon completion of the Energy Management Plan, the Council and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(f) The Council shall update such plan upon a finding by it that an update is justified and shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(g) The Governor shall have the authority to accept, administer and enforce federal programs, program measures, and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to management of energy resources.

(h) The Governor shall have the authority to accept, administer and enforce the delegation of authority delegated to the State by the Emergency Petroleum Allocation Act and the Emergency Energy Conservation Act of 1979 and any orders, rules, and regulations issued pursuant to those acts as well as any succeeding federal programs, program measures, laws, orders, or regulations relating to the allocation, conservation, consumption, management or rationing of energy resources. (1975, c. 877, s. 4; 1981, c. 701, s. 2.)

§ 113B-9. Emergency Energy Program; components.

(a) The Energy Policy Council shall, in accordance with the provisions of this Article, develop contingency and emergency plans to deal with possible shortages of energy to protect public health, safety and welfare, such plans to be compiled into an Emergency Energy Program.

(b) If required for an update of the program provided under subsection (j) of this section:

- (1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy Policy Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users. Utilities regulated under Chapter 62 of the General Statutes may satisfy this requirement by submitting the General Load Reduction and System Restoration Plan that is prepared annually for the Utilities Commission.
- (2) Each major oil producer doing business in this State as determined by the Energy Policy Council shall prepare and submit to the Energy Policy Council an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(c) The Energy Policy Council shall encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major producers or by an association of such companies, the joint plans or analyses may be submitted to the Energy Policy Council in lieu of information required pursuant to subsection (b) of this section.

(d) The Energy Policy Council shall collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(e) The Energy Policy Council shall hold one or more public hearings, investigate and review the plans submitted pursuant to this section, and, within nine months after July 1, 1975, the Energy Policy Council shall approve and recommend to the Governor guidelines for emergency curtailment to be known as the Emergency Energy Program and to be implemented upon adoption by the Governor after the declaration of an energy crisis and pursuant to G.S. 113B-20 and 113B-23. Said program shall be based upon the plans presented to the Energy Policy Council, upon independent analysis and study by the Council, and upon information provided at the hearing or hearings, provided, however, that they are consistent with such federal programs and regulations as are already in effect at that time.

(f) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy. For utilities regulated under Chapter 62 of the General Statutes, the program shall be consistent with the General Load Reduction and System Restoration Plan that is prepared annually for the Utilities Commission. Provisions also shall be made in said program to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments, and shall also include, but not be limited to, the following:

- (1) A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;
- (2) Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations;
- (3) Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving measures;

(g) The Energy Policy Council shall carry out such investigations and studies as are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina and the Council shall make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages, such recommendations to be included as a section of the Emergency Energy Program.

(h) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include procedures, rules and regulations and agency administrative responsibilities for implementation, and shall further contain procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(i) Upon completion of the Emergency Energy Allocation Program, the Council and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(j) The Council shall update the Emergency Energy Allocation Program upon finding that an update is justified. The Council shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(k) The Governor shall have the authority to accept, administer and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to actions necessary to deal with an actual or impending energy shortage. (1975, c. 877, s. 4; 1979, c. 514, s. 2; 1981, c. 701, s. 3; 2013-365, s. 8(g).)

§ 113B-10: Repealed by Session Laws 2009-446, s. 7, effective August 7, 2009.

§ 113B-11. Powers and authority.

(a) The Energy Policy Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

(b) To assure the adequate development of relevant energy information, the Council may require all energy producers and major energy consumers, as determined by the Council, to file such reports and forecasts and at such dates as the Council may request; provided, however, that the Council may request only specific energy-related information which it deems necessary to carry out its duties as defined in Articles 1 and 2 of this Chapter.

(c) The Council shall have authority to apply for and utilize grants, contributions and appropriations in order to carry out its duties as defined in Articles 1 and 2 of this Chapter, provided, however, that all such applications and requests are made through and administered by the Department of Environmental Quality.

(d) The Council shall have authority to request said Department to allocate and dispense any funds made available to the Council for energy research and related work efforts in such a

manner as the Council desires subject only to the stipulation that said funds be reasonably used in furtherance of the purposes of this Article.

(e) Staff support required by the Council shall be supplied by the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality. The Department of Environmental Quality shall provide legal support to the Council as needed from the Department's staff. The Department of Commerce and the Utilities Commission are hereby authorized to make their staff available to the Council to assist in the development of a State energy policy. (1975, c. 877, s. 4; 1977, c. 23, s. 1; 1989, c. 751, s. 7(10); 1991 (Reg. Sess., 1992), c. 959, s. 28; 2000-140, s. 76(d); 2009-446, s. 8; 2013-360, s. 15.22(m); 2013-365, s. 8(h); 2014-4, s. 29(b); 2015-241, s. 14.30(u).)

§ 113B-12. Annual reports; contents.

(a) Every two years the Energy Policy Council shall transmit to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Environmental Review Commission, the Joint Legislative Commission on Energy Policy, and the chairman of the Utilities Commission a comprehensive report providing a general overview of energy conditions in the State.

(b) The report shall include, but not be limited to, the following:

- (1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;
- (2) The level of statewide and multi-county regional energy demand for a five, 10- and 20-year forecast period which, in the judgment of the Council, can reasonably be met, with proposals as to possible energy supply sources;
- (3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;
- (4) An analysis of the role of energy efficiency, renewable energy, improvements to the State's energy infrastructure, and other means in meeting the State's current and projected energy demand;
- (5) Repealed by Session Laws 2009-446, s. 9, effective August 7, 2009.
- (6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;
- (7) A summary of the Council's activities since the last report, a description of major plans developed by the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium. (1975, c. 877, s. 4; 2009-446, s. 9; 2013-365, s. 8(i).)

§§ 113B-13 through 113B-19. Reserved for future codification purposes.